



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 23 2009

Jan W. Baran, Esq.
Wiley Rein, LLP
1776 K Street, NW
Washington, DC 20006

RE: MUR 6075
Congressman Joe Barton
Congresswoman Kay Granger

Dear Mr. Baran:

On September 24, 2009, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 17, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe Congressman Joe Barton and Congresswoman Kay Granger violated 2 U.S.C. § 441i(e)(1)(B). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, reading "Susan L. Leheaux".

Susan L. Leheaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Joe Barton
Kay Granger

MUR: 6075

I. INTRODUCTION

This matter was generated by a complaint filed by Betty Fischer. *See* 2 U.S.C. 437(g)(a)(1).

II. FACTUAL SUMMARY

The complaint alleges that Congressman Joe Barton, Congresswoman Kay Granger, Texas State Representative Bill Zedler and his state campaign committee, Friends of Zedler, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with a September 9, 2008 fundraising event for Bill Zedler's reelection to the Texas State House of Representatives. Specifically, the complaint alleges that U.S. Representatives Barton and Granger, together with their "agent," State Representative Zedler, illegally solicited "soft money" in an August 19, 2008 invitation to the event, which listed U.S. Representative Barton and Granger as "Honorary Hosts" of the event. Representatives Barton and Granger responded to the complaint by asserting that the matter should be dismissed. Their response includes an affidavit from Bill Zedler.

The invitation solicited contributions in the amounts of \$1,000, \$2,500, or \$5,000. The complaint states that after a *Texas Weekly* blog article described the invitation as a "violation," the Zedler campaign sent a second invitation that omitted the Representatives' names and designations and stated "a layout error was made on the previous invitation to this event. This corrected invitation supersedes all other invitations in order to ensure complete compliance with

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state and federal law." The second invitation solicits contributions in the same amounts as the first.

In his affidavit, Zedler states that Representative Barton and Granger, as well as Texas Attorney General Greg Abbott, and Texas State Senators Kim Brimar and Jane Nelson, agreed to serve as "Honorary Hosts" of his September 9, 2008 fundraiser. According to Zedler, "[a]sking other elected officials to serve as Honorary Hosts is customary in state elections." However, Zedler avers:

At no time during the conversations with any of the elected officials or their respective staffs were they requested to solicit political contributions on my behalf nor did they request that I solicit political contributions in their name or otherwise authorize me or my staff to do so. Moreover, it was never my intent to attribute any funds that would be raised at the fundraiser for my state re-election campaign to any of the elected officials due to their mere attendance at the fundraiser. . . . None of the elected officials or their respective staffs reviewed or were otherwise involved in the preparation or dissemination of the invitation. Additionally, neither my staff nor I informed Congresswoman Granger and Congressman Barton, or their respective staffs, as to the content of the invitation.

After speaking to the *Texas Weekly* reporter, Zedler contacted the staffs of Representatives Barton and Granger and told them he was reissuing the invitation without their names and publishing "a new and clarifying invitation to supersede all previous invitations." Finally, Zedler avers that neither Representative attended the fundraiser, that the largest individual contribution received at the event was \$1,250, and that the largest PAC contribution received was \$2,500, both of which are within the applicable federal limits. In their joint response, the Representatives rely on Zedler's affidavit, but additionally state that the conversations with the Zedler campaign were through their staffs, the agreements to serve as "honorary hosts" were "preliminary," and that neither they, nor their respective staffs, reviewed or were otherwise aware of the first invitation prior to its issuance by the Zedler campaign.

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III. ANALYSIS

Federal officeholders and candidates for Federal office may solicit, receive, direct, transfer or spend funds in connection with any non-Federal election, only in amounts and from sources that are consistent with State law and that do not exceed the Act's contribution limits or come from prohibited sources. *See* 2 U.S.C. § 441i(e)(1)(B) and 11 C.F.R. § 300.62. At the time of the events in question, the Act limited individual contributions to \$2,300; political action committee contributions were and are limited to \$5,000. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(2)(A); *see also* 2 U.S.C. § 441a(c).

Here, the first invitation solicits contributions of up to \$2,500 and \$5,000, which exceed the Act's limitation for individual contributors. In addition, the invitation fails to state that corporate and labor union contributions are prohibited. However, from the information available, it appears that neither Representative approved, authorized, agreed or consented to be featured or named, in the publicity. The complaint states that "it is inconceivable that [State Representative Zedler] would have distributed an invitation featuring two Members of Congress without having secured their consent beforehand." However, while Zedler apparently thought he had their final consent to serve as "Honorary Hosts," he stated in his affidavit that he did not have Representatives Barton's and Granger's consent to use their names in an invitation in order to raise money. Zedler has averred, and both Representatives agree, that there were no conversations with the Representatives or their staffs concerning the soliciting of contributions on Zedler's behalf or in their names. Moreover, in his affidavit, Zedler stated that he never obtained authorization from the Representatives to solicit contributions using their names, and that neither the Representatives nor their staffs reviewed or were involved in the preparation or dissemination of the first invitation, or were informed of its contents. Further, Barton and

Granger each assert that even the agreement to serve as "Honorary Host" was "preliminary."

Accordingly, the Commission determined that the Representatives did not appear to have approved, authorized, agreed, or consented to be featured or named in the first invitation.

Therefore, the Commission found no reason to believe that Congressman Joe Barton and Congresswoman Kay Granger violated 2 U.S.C. § 441i(e)(1)(B).

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